

EXHIBIT “B”



SPECIAL EXCEPTION APPLICATION )  
 )  
ON BEHALF OF ) Case No. \_\_\_\_\_  
 )  
COSTCO WHOLESALE CORPORATION )

STATEMENT OF COSTCO WHOLESALE CORPORATION  
IN SUPPORT OF THE REQUESTED SPECIAL EXCEPTION

Petitioner, Costco Wholesale Corporation ("Costco") submits this statement in support of the proposed automobile filling station to be located on a parcel located in the southwest quadrant of the Wheaton Westfield Mall property.

In November, 2010, Costco filed a special exception application (S-2794) for an automobile filling station on a portion of the Wheaton Westfield Mall Property located to the west of the parcel of land which is the subject of this special exception application. Prior to the Maryland-National Capital Park and Planning Commission's staff's issuance of a staff report on S-2794 (and thus prior to the Planning Board's consideration of S-2794 or a Zoning Hearing Examiner hearing on S-2794), the Montgomery County Council introduced Zoning Text Amendment ("ZTA") 12-03 proposing certain setbacks on the Costco filling station. In July, 2012, by Ordinance No. 17-19, the County Council adopted ZTA 12-03 requiring the Costco gas station to be setback 300 feet from certain uses, including outdoor recreational uses. As a result of Ordinance No. 17-19, the filling station proposed by S-2794 was no longer able to comply with the automobile filling station special exception development standards set forth in Zoning Ordinance Section 59-G-2.06. By letter dated October 23, 2012 Costco withdrew S-2794. The subject special exception application proposes a new location for the proposed filling station, in accordance with Ordinance No. 17-19.

I. Description of Property, Proposed Improvement and Use and Operation

In connection with the development of a Costco Warehouse in the former Hecht's structure at the Westfield Wheaton Mall, Petitioner is pursuing special exception approval for an integral component of Costco's overall operation -- a filling station.

Westfield Wheaton Mall is located in the southwest quadrant of the intersection of University Boulevard and Veirs Mill Road, and bears an address of 11160 Veirs Mill Road (the "Mall Parcel"). The Mall Parcel consists of 80.91 acres and is known as Parcels 3, 5, 6, 7, 8 and 10 on Montgomery County Tax Map HQ 561 (Exhibit "A"). The property is zoned C-2 (General Commercial). As detailed in the Land Use Report, the Mall Parcel contains approximately 1.5 million square feet of retail uses and 194,000 square feet of office use. The Land Planning Report details the continued expansion and

increased intensity of the Mall over its 50-year history, including the approximately 200,000 square feet of additional density currently permitted to be developed on the Mall Parcel.

The owners of Westfield Wheaton Mall, Wheaton Plaza Regional Shopping Center, L.L.P., an affiliate of Westfield Corporation ("Westfield"), and Costco entered into a Lease for the development of a Costco Warehouse and a filling station to be located on a 37,754 square foot parcel in the southwest quadrant of the Mall Parcel (the "Property"). The location of the Property results in part from Westfield's lease agreements with existing tenants which impose building restrictions on the remaining parking fields and in part from Montgomery County's recent adoption of Ordinance No. 17-19, requiring that the proposed filling station be located 300 feet from an outdoor recreational use. Accordingly, the parking field on which the Property is located is the only location available to Costco. A detailed description of the Property, its adjacent and surrounding uses, topography and surrounding landscaping is set forth in the Land Planning Report (Exhibit "O"). As part of the Special Exception application, Petitioner proposes to enhance and increase the existing forest buffer located on the Mall Parcel adjacent to the residential areas to the south and west of the Mall Parcel which ranges in depth from 70 feet to 190 feet; construct an eight foot high acoustical screen wall along the outer perimeter of a portion of the Mall's Ring Road located to the south and west of the Property; enhance the existing landscaping along the Ring Road within the parking islands; and add landscape islands to the south and west of the Property.

Petitioner proposes the construction of an automobile filling station on the Property (the "Filling Station"). The Filling Station's sole operation will be to dispense gasoline to only Costco members. The Filling Station improvements include four islands with a total of eight multi-purpose fuel dispensers, a canopy and a 128 square foot sales kiosk. The hours of operation of the Filling Station will be 6:00 AM to 9:30 PM Monday through Friday; 6:00 AM to 7:00 PM Saturday and Sunday. The only signage associated with the Filling Station (other than a portable sandwich board providing daily gas prices, which is required by law) will be four 28.50 square foot signs, with each sign located on one of the four sides of the canopy. Lighting, as described in the Land Planning Report, will be provided. All lighting associated with the Filling Station will be turned off shortly after the Filling Station closes each evening.

As detailed in the Engineering Report (Exhibit "R"), stormwater management measures to accommodate the development of the Filling Station will be implemented. These measures will result in additional overall quality and quantity controls to the Property to supplement the quality and quantity controls being provided in connection with the Costco Warehouse and will represent a significant improvement over current conditions.

## II. Sector Plan Conformance

The Property is subject to the 2012 Approved and Adopted Wheaton CBD and Vicinity Sector Plan (the "Sector Plan"). The Sector Plan retained the existing C-2 zone designation for the majority of the Mall Parcel including the Property. The Sector Plan recommended the continuity of the Mall Parcel for a Regional Mall, an intense, auto-centric use. The Land Planning Report discusses in detail the proposed Filling Station's conformance with the Sector Plan.

## III. Needs Analysis

As a precondition to Special Exception approval, Montgomery County requires that automobile filling stations demonstrate a "neighborhood-need" for a new station. More specifically, Zoning Ordinance Section 59-G-1.24 requires "that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar use in the neighborhood". What precisely is required to demonstrate neighborhood-need has been addressed many times by both the Board of Appeals and the Maryland Court of Appeals. Importantly, need has been judicially held to mean "expedient, reasonably convenient and useful to the public," not an absolute necessity.

The Neighborhood Needs Analysis submitted by Thomas Point Associates, Inc. (Exhibit "Q"), demonstrates that there is neighborhood-need for the Filling Station. This conclusion is reached following a thorough evaluation of the existing automobile filling stations within a 7-minute drive of the Property, the existing and projected residential and employment population, and the number of travelers that pass by the Mall Parcel. The Market Need Study recognizes the competitive nature of filling stations and that price is a significant factor in gasoline consumer decision making. The Market Need Study also discusses the various other factors that have contributed to the continued reduction in the number of filling stations in Montgomery County over the past several years.

## IV. Inherent and Non-inherent Impacts

In accordance with Zoning Ordinance Section 59-G-1.2.1, in connection with the Board of Appeals' approval of a special exception, the Board must evaluate the inherent and non-inherent adverse effects of the proposed use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the C-2 Zone. Inherent adverse effects are defined as the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects arise from the physical and operational characteristics not necessarily associated with the

particular use which result in an adverse effect, or adverse effects created by unusual characteristics of the site.

The Board of Appeals has previously identified the inherent impacts associated with an automobile filling station. The Petitioner will demonstrate that the proposed Filling Station will not cause any adverse effects over and above the previously identified inherent impacts associated with the use.

## V. Exhibits

The following exhibits are submitted in accordance with the requirements set forth in Zoning Ordinance Section 59-A-4.22:

1. Application for a Special Exception (Exhibit "A")
2. Statement of Petitioner (Exhibit "B")
3. List of Adjoining and Confronting Property Owners and Local Citizens Associations (Exhibit "C")
4. Letter of Authorization from Wheaton Plaza Regional Shopping Center, L.L.P. (Exhibit "D")
5. Montgomery County Tax Map showing the Property (Exhibit "E")
6. Certified Zoning Map of the Property (Exhibit "F")
7. Aerial of the Property (Exhibit "G")
8. Special Exception Site Plan and Survey Plat of Existing Conditions prepared by Bohler Engineering (Exhibit "H")
9. Overall Proposed Condition Plan and Overall Illustration Plan, including zoning of surrounding area prepared by Bohler Engineering (Exhibit "I")
10. Landscape Plans prepared by Mark Willard & Associates (Exhibit "J")
11. Vehicular Circulation Plan prepared by The Traffic Group (Exhibit "K")
12. Lighting Plan prepared by T. E., Inc. (Exhibit "L")
13. Applicable Sections of the 2012 Approved and Adopted Wheaton Central Business District and Vicinity Sector Plan (Exhibit "M")
14. Architectural Plans, including Signage Plan prepared by Mulvanny G2 Architects (Exhibit "N")
15. Land Planning Report prepared by Lessard Group (Exhibit "O")
16. Traffic Impact Analysis for LATR and PAMR – Special Exception prepared by The Traffic Group (Exhibit "P")
17. Neighborhood Needs Analysis prepared by Thomas Point Associates, Inc. (Exhibit "Q")
18. Engineering Report prepared by Bohler Engineering (Exhibit "R")
19. NRI/FSD Exemption Letter and Forest Conservation Exemption Approval (Exhibit "S")
20. Impact on Nearby Property Values Report prepared by Lipman Frizzell & Mitchell, LLC (Exhibit "T")
21. Resume of Thomas Flynn (Exhibit "U")

22. Resume of Steve Gang (Exhibit "V")
23. Resume of Joel Russell (Exhibit "W")
24. Resume of Mark Willard (Exhibit "X")
25. Resume of Wes Guckert (Exhibit "Y")
26. Resume of Joe Cronyn (Exhibit "Z")
27. Resume of David Sullivan (Exhibit "AA")
28. Resume of Dan Duke (Exhibit "BB")
29. Resume of Dr. Kenneth H. Chase (Exhibit "CC")

IX. Summary of Case

A. What Petitioner Intends to Prove

Through the testimony of the expert witnesses, the reports of the expert witnesses and the corresponding exhibits which are a part of this Special Exception application, the Applicant will demonstrate that pursuant to the standards of Sections 59-G-1.2 and 59-G-2.06 of the Zoning Ordinance, the proposed Special Exception application:

1. Is a special exception use permitted in the C-2 Zone.
2. Complies with the standards and requirements set forth for the use in Section 59-G-2.06 of the Zoning Ordinance.
3. Is consistent with the general plan for the physical development for the District, including the approved and adopted 2012 Wheaton CBD and Vicinity Sector Plan.
4. Is in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.
5. Is not detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the C-2 Zone.
6. Causes no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the C-2 Zone.
7. Does not, when evaluated in conjunction with any existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.
8. Does not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site,

irrespective of any adverse effects the use might have if established elsewhere in the C-2 Zone.

9. Is served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities, and will have no detrimental effect on the safety of vehicular or pedestrian traffic.

B. Witnesses, including summaries of Expert Witnesses

The Applicant expects to call the following witnesses at the public hearing:

1. Mr. Erich Brann, Costco Wholesale Corporation -- Mr. Brann will testify to the proposed establishment of Costco at Wheaton Mall; Costco's leasehold interest in the Property; Costco's general operations; how the Filling Station is integrated into the overall products and services Costco provides to its customers; the need for the Filling Station; and the specific operations of the Filling Station.
2. Mr. Jim Agliata, Vice President, Westfield Corporation -- Mr. Agliata will describe the Mall Parcel, the history of the development of the Mall Parcel, and the operations of the Mall.
3. Mr. Steve Gang, Land Planner, Lessard Group -- Mr. Gang will testify as an expert in Land Planning in Montgomery County. Mr. Gang will describe the Property and the surrounding area and will testify to the proposed Special Exception's conformance with the recommendations of the Wheaton Sector Plan and compliance with those Special Exception criteria set forth in Zoning Ordinance Sections 59-G-1.21 and 59-G-2.06 that pertain to issues of Land Planning.
4. Mr. Joel Russell, Certified Architect, Mulvanny G2 Architects -- Mr. Russell will testify as an expert in the field of architecture. Mr. Russell will describe the architectural components and the signage of the proposed Filling Station.
5. Mr. Mark Willard, Principal, Mark Willard & Associates, LLC -- Mr. Willard will testify as an expert in the field of Landscape Architecture. Mr. Willard will testify to the existing and supplemental landscaping and the benefits such landscaping provides.
6. Mr. Thomas Flynn, President, Thomas Point Associates -- Mr. Flynn will testify as an expert in the field of Market Analysis. Mr. Flynn will testify to the need for the Filling Station as required by Zoning Ordinance Section 59-G-1.24.
7. Mr. Joe Cronyn, Principal, Lipman, Frizzel & Mitchell -- Mr. Cronyn will testify as an expert in the field of land appraisal. Mr. Cronyn will testify with respect to his evaluation of the impact, if any, of the proposed Special

Exception on the economic value of the residential properties located to the south and west of the Property.

8. Mr. Dan Duke, Senior Project Manager, Bohler Engineering -- Mr. Duke will testify as an expert in the field of civil engineering. Mr. Duke will address the effect of the proposed Filling Station on the surrounding area, the stormwater management measures that will be implemented in connection with the Special Exception, the adequate public facilities serving the Property and that the use satisfies those Special Exception criteria of Zoning Ordinance Section 59-G-1.21 and 59-G-2.06 that pertain to issues of civil engineering.
9. Mr. Wes Guckert, President, The Traffic Group -- Mr. Guckert will testify as an expert in the field of Transportation Planning. Mr. Guckert will describe the circulation patterns anticipated by the proposed Special Exception and will testify that there are adequate public facilities in terms of road capacity to serve the proposed use, that the proposed use will not cause any vehicular or pedestrian conflict and that the use satisfies those requirements of Zoning Ordinance Sections 59-G-1.21 and 59-G-2.06 that pertain to issues of transportation and traffic issues.
10. Mr. David Sullivan, Certified Consulting Meteorologist, Sullivan Environmental Consulting, Inc. -- Mr. Sullivan will testify as an expert in the field of environmental planning. Mr. Sullivan will testify as to the conclusions of the environmental analyses conducted by Sullivan Environmental in connection with the proposed Filling Station; that the proposed use will not cause any objectionable fumes or odors; and that the use satisfies those requirements of Zoning Ordinance Sections 59-G-1.21 and 59-G-2.06 that pertain to environmental issues.
11. Dr. Kenneth H. Chase, MD, FACOEM, Washington Occupational and Health Associates -- Dr. Chase will testify that based on the conclusions set forth in Sullivan Environmental Consulting, Inc.'s Air Quality, Odor and Noise Analysis, the Filling Station will not adversely affect the health, safety or general welfare of the residents, visitors or workers in the area of the Filling Station.

The Applicant reserves the right to call additional witnesses not herein identified.

C. Estimated Time to Present Case

Petitioner estimates that it will take approximately two days to present its case in chief.



Petitioner reserves the right to file a supplemental statement in support of the Special Exception, as well as additional experts' reports, prior to the hearing.

Respectfully submitted,

LERCH, EARLY & BREWER CHTD.

A handwritten signature in black ink, appearing to read 'Patricia A. Harris', with a horizontal line extending to the right.

Patricia A. Harris